

Assembly Bill No. 308

CHAPTER 718

An act to amend Section 10177.4 of the Business and Professions Code, and to add Section 641.4 to the Penal Code, relating to real estate.

[Approved by Governor October 6, 1997. Filed
with Secretary of State October 7, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 308, Leonard. Commercial bribery: real estate sales.

(1) Existing law provides, except as specified, that every employee, as defined, who solicits, accepts, or agrees to accept any money or thing of value from any person other than his or her employer, other than in trust for the employer, corruptly, as defined, and without the knowledge or consent of the employer, in return for using or agreeing to use his or her position for the benefit of that other person, and any person who offers or gives an employee money or any thing of value under those circumstances, is guilty of commercial bribery, except as specified. Existing law further provides that commercial bribery is punishable by imprisonment in a county jail for not more than one year if the amount of the bribe is \$1,000 or less, or by imprisonment in a county jail, or in the state prison for 16 months, or 2 or 3 years if the amount of the bribe exceeds \$1,000.

This bill would provide that an employee of a title insurer, underwritten title company, or controlled escrow company who corruptly violates a certain statutory provision by paying, directly or indirectly, a commission, compensation, or other consideration to a real estate salesperson or real estate broker, or a real estate salesperson or real estate broker who corruptly violates another statutory provision by receiving from an employee of a title insurer, underwritten title company, or controlled escrow company a commission, compensation, or other consideration, as an inducement for the placement or referral of title business, is also guilty of commercial bribery, which would be punishable by imprisonment in a county jail for not more than one year, or by a fine of \$10,000 for each unlawful transaction, or by both a fine and imprisonment.

(2) Existing law authorizes the Real Estate Commissioner, after hearing in accordance with certain provisions, to suspend or revoke the license of a real estate licensee who claims, demands, or receives a commission, fee, or other consideration, as compensation or inducement, for referral of customers to any escrow agent, structural pest control firm, home protection company, or underwritten title company.

This bill would prohibit a licensee from being disciplined for reporting to the commissioner violations of the above provision by another licensee, unless the licensee making the report had guilty knowledge of, or committed or participated in, the violation of that provision. By making the crime of commercial bribery applicable to a new category of persons, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that illegal rebates and kickbacks are a significant problem in the marketing of title insurance in California, and have been a problem for more than two decades. Administrative penalties available to the Department of Insurance and the Department of Real Estate are ineffective in curtailing this illegal activity, which stifles competition, increases costs to consumers, and prejudices legitimate competitors in the marketplace.

It is the intent of the Legislature in enacting this bill to provide an effective deterrent to illegal rebates and kickbacks by clarifying that those who knowingly violate the law are guilty of commercial bribery.

It is further the intent of the Legislature to ensure that real estate licensees who are not participating in this illegal rebate and kickback activity report, without fear of license sanctions, their knowledge of participation in this activity by other licensees to the Real Estate Commissioner.

SEC. 2. Section 10177.4 of the Business and Professions Code is amended to read:

10177.4. (a) Notwithstanding any other provision of law, the commissioner may, after hearing in accordance with this part relating to hearings, suspend or revoke the license of a real estate licensee who claims, demands, or receives a commission, fee, or other consideration, as compensation or inducement, for referral of customers to any escrow agent, structural pest control firm, home protection company, title insurer, controlled escrow company, or underwritten title company. A licensee may not be disciplined under any provision of this part for reporting to the commissioner violations of this section by another licensee, unless the licensee making the report had guilty knowledge of, or committed or participated in, the violation of this section.



(b) The term “other consideration” as used in this section does not include any of the following:

(1) Bona fide payments for goods or facilities actually furnished by a licensee or for services actually performed by a licensee, provided these payments are reasonably related to the value of the goods, facilities, or services furnished.

(2) Furnishing of documents, services, information, advertising, educational materials, or items of a like nature that are customary in the real estate business and that relate to the product or services of the furnisher and that are available on a similar and essentially equal basis to all customers or the agents of the customers of the furnisher.

(3) Moderate expenses for food, meals, beverages, and similar items furnished to individual licensees or groups or associations of licensees within a context of customary business, educational, or promotional practices pertaining to the business of the furnisher.

(4) Items of a character and magnitude similar to those in paragraphs (2) and (3) that are promotional of the furnisher’s business customary in the real estate business, and available on a similar and essentially equal basis to all customers, or the agents of the customers, of the furnisher.

(c) Nothing in this section shall relieve any licensee of the obligation of disclosure otherwise required by this part.

SEC. 3. Section 641.4 is added to the Penal Code, to read:

641.4. (a) An employee of a title insurer, underwritten title company, or controlled escrow company who corruptly violates Section 12404 of the Insurance Code by paying, directly or indirectly, a commission, compensation, or other consideration to a licensee, as defined in Section 10011 of the Business and Professions Code, or a licensee who corruptly violates Section 10177.4 of the Business and Professions Code by receiving from an employee of a title insurer, underwritten title company, or controlled escrow company a commission, compensation, or other consideration, as an inducement for the placement or referral of title business, is guilty of commercial bribery.

(b) For purposes of this section, commercial bribery is punishable by imprisonment in a county jail for not more than one year, or by a fine of ten thousand dollars (\$10,000) for each unlawful transaction, or by both a fine and imprisonment.

(c) For purposes of this section, “title business” has the same meaning as that used in Section 12404 of the Insurance Code.

(d) This section shall not preclude prosecution under any other law.

(e) This section shall not be construed to supersede or affect Section 641.3. A person may be charged with a violation of this section and Section 641.3. However, a defendant may not be punished under this section and Section 641.3 for the same act that constitutes a violation of both this section and Section 641.3.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

